

3:19cv380

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

DONALD R. CONKLIN IV
PLAINTIFF,
V.
OFFICER CARDENAS
DEFENDANT.

CASE NO.

HON.

FILED
SCRANTON

MAR 04 2019

PER S
DEPUTY CLERK

COMPLAINT WITH JURY DEMAND

Introduction

This is a civil rights action filed by Donald R. Conklin, a county inmate, for damages and injunctive relief under 42 U.S.C. §1983, alleging retaliation for speech in violation of the First Amendment and cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Jurisdiction

1. The Court has jurisdiction over the plaintiff's claims of violation of federal constitutional rights under 42 U.S.C. §§1331 and 1343.

Parties

2. The plaintiff, Donald R. Conklin IV, was incarcerated at Monroe County Correctional Facility ("MCCF") during the events described in this complaint.

3. The defendant, Officer Cardenas, is a correctional officer employed at MCCF. He is sued in his individual and official capacities.

Facts

4. On November 8th, 2018, at approximately 0700 hours, the plaintiff was locked in his cell (“M.I.-10”) following a mandatory facility lockdown.
5. The plaintiff was and had been engaged in a conversation with another inmate housed in the cell adjacent to his (“M.I.-9”).
6. The defendant had come on to the plaintiff’s unit (“Male Intake”) as the assigned housing unit officer at the beginning of his shift; 0700 hours.
7. After making his preliminary rounds, the defendant took his seat at the officer’s desk.
8. Minutes later, the defendant interrupted the plaintiff’s conversation and told the plaintiff to “Shut up.”
9. The plaintiff related that he has a constitutionally protected right to freedom of speech.

Retaliation for Speech

10. The defendant then related, for the rest of the inmates on Male Intake to hear, “You also have the right to child porn,” referring to criminal charges which the plaintiff was acquitted of six (6) months prior.

Facts

11. On November 8th, 2018, at approximately at 1115 hours, the plaintiff was locked in M.I.-10 following a mandatory facility lockdown.
12. During said lockdown, a phone repairman came on Male Intake to repair an inmate phone.
13. During said repair, an announcement was made over MCCF's intercom stating that "The count is clear," which typically precedents a facility unlock.
14. The defendant did not unlock any inmates' cell doors.
15. Minutes later, a cart which contained Male Intake's meals was delivered to the unit by inmate workers.
16. The defendant then verbally announced to the inmates on Male Intake that "[inmates] will not eat until [the phone repairman] has finished his job."
17. The plaintiff then stated, "You remember what happened the last time you tried to keep somebody's food from them," referring to an incident which occurred approximately five months prior where the defendant was assaulted by an inmate whom was denied a meal tray by the defendant.
18. The defendant then called for the plaintiff to be removed from Male Intake and placed in administrative segregation.

19. Thereafter, two (2) other correctional staff members had come to M.I.-10 to remove the plaintiff from Male Intake and place him in administrative segregation.

Cruel and Unusual Punishment

20. Sometime between November 9th and November 14th, 2018, the plaintiff was served with a misconduct report charging him with threatening another person and threatening or abusive language toward staff.

21. The plaintiff participated in a disciplinary hearing on November 15th, 2018 for the charges.

22. At the conclusion of the hearing, the Disciplinary Board had found the plaintiff guilty of threatening another person and sentenced him to fourteen (14) days in disciplinary segregation.

23. Pursuant to facility procedure, the plaintiff filed an administrative appeal with the warden pointing out that his statements were not threatening, that he has no past history of violence, and that the defendant in this matter had previously antagonized him earlier on November 8th, 2018 by falsely announcing to the other inmates that he is a sexual offender.

24. The warden denied the plaintiff's appeal.

Claims for Relief

25. The actions of the defendant in falsely relating to other inmates that the plaintiff is a sexual offender were done maliciously and sadistically and constituted retaliation for speech in violation of the First Amendment to the United States Constitution.
26. The actions of the defendant in charging the plaintiff with misconduct without need or provocation were done maliciously and sadistically and constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Relief Requested

WHEREFORE, plaintiff requests that the court grant the following relief:

1. Issue an injunction ordering the warden of MCCF, Garry Hidle, to expunge the disciplinary conviction described in this complaint from the plaintiff's institutional record.
2. Award punitive damages in the amount of \$5,000 against the defendant.
3. Grant such other relief as it may appear the plaintiff is entitled.

FEBRUARY 27TH, 2019

Respectfully submitted,

Donald R. Conklin IV

Donald R. Conklin IV
4250 Manor Drive
Stroudsburg, PA 18360

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CERTIFICATE OF SERVICE

I, Donald R. Conklin IV, the undersigned, hereby certify that I served this Complaint in the above-captioned action upon Peter J. Welsh, acting clerk of court, via United States Postal Service at the following address:

235 North Washington Avenue, Scranton, Pennsylvania on the 27th day of February, 2019.

I verify that the statements made in this certificate are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of perjury.

Donald R. Conklin IV

Donald R. Conklin IV

4250 Manor Drive

Stroudsburg, PA 18360

VERIFICATION

I verify that I, Donald R. Conklin IV, submit this Complaint in the present action and that the facts and statements contained in the above document are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made are subject to the penalties of perjury.

FEBRUARY 27TH, 2019

Donald R. Conklin IV

DONALD R. CONKLIN III

4250 MANOR DRIVE
STROUDSBURG, PA 18360

OFFICIAL BUSINESS

PETER

ACTING CLERK

UNITED STATES
MIDDLE DIST.

235 North

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